THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.3790 of 1998

DATED:09.08.2007

Between:

A.Surender Reddy

.. Petitioner

And

Municipal Corporation of Hyderabad,rep.
by its Commissioner, Hyderabad,
and others

.. Respondents

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.3790 of 1998

ORDER:

This writ petition is filed seeking a writ of Mandamus directing the respondents 1 to 3 to remove the construction being made, contrary to the sanctioned plan, by the respondents 4 to 6 herein in plot bearing No.B-6 situated at Harivihar colony, Narayanaguda, Hyderabad towards Eastern side of the building bearing Municipal No.3-5-199/B/8 belonging to the writ petitioner by declaring that the regularization made vide permit Nos.82/844, dt.31.07.1997 in file No.532/TP/R(8)/TPS/MCH/97/HO and 82/8145 dt.31.7.1997 in file No.533/TP/R(8)/TPS/MCH/HO by the respondent Nos.1 to 3 herein as illegal, unauthorized and contrary to G.O.Ms.No.243 MA, dated 22-5-96, and contrary to the earlier and subsequent G.Os issued by the Government in that regard.

2. The main grievance of the petitioner is that respondent No.4 has purchased the plot bearing No.B-6 situated at Harivihar colony, Narayanaguda, Hyderabad, which is on the eastern side of his plot bearing No.B-8, and made construction contrary to the sanctioned plan, due to which, his basic rights regarding ventilation, light and air are badly affected. Further, the petitioner averred that respondent No.4 not only deviated from the sanctioned plan, but also raised structures for the second and third floors unauthorisedly and contrary to the rules

prescribed under the Group Construction Scheme, as such, he made a complaint to the first respondent with a request to remove the unauthorized construction made by respondent No.4, whereby, the first respondent issued a notice under Section 461 of Hyderabad Municipal Corporations Act, 1955 (for short, 'the HMC Act'). Pursuant to the notice issued under Section 461 of the HMC Act, respondent No.4 along with respondent Nos. 5 and 6, who are her minor daughters, filed a suit, being O.S.No.852 of 1997 on the file of II Assistant Judge, City Civil Court, Hyderabad without impleading the petitioner as a party and obtained an injunction order against respondent No.1. Subsequently, on coming to know about the suit filed by respondent No.4, the petitioner filed I.A.No.1859 of 1997 under Order 1 Rule 10 C.P.C. to implead him as a party defendant in the said suit and also in I.A.No.1255 of 1997, which was filed for ad-interim injunction order, and the learned II Assistant Judge had allowed I.A.No.1859 of 1997 and directed the respondents 4 to 6 to file the amended plaint impleading him as a party defendant.

Further, the petitioner in his affidavit reiterated the averments made in the counter filed by respondent no.1 through respondent no.3 in I.A.No.1255 of 1997, wherein it was stated that the petitioner in the said I.A., who is respondent no.4 herein, has constructed the ground and first floors in accordance with the sanctioned plan, whereas second and third floors were constructed unauthorisedly and in violation of rules in force, thereby effecting the easementary rights of ventilation, light and air of the petitioner herein, who made complaint to the first respondent. Further, it was stated that the construction made and completed prior to 31.03.1996 on site area upto 200 sq. meters can only be regularized as per G.O.Ms.No.243, dt.22.05.1996.

The petitioner further contended in his affidavit filed in support of the writ petition that the respondents 1 to 3, contrary to G.O.Ms.No.243 and contrary to the stand taken by respondent no.1 in its counter in IA.No.1255 of 1997 in the said suit, have regularized the entire unauthorized construction made by respondent no.4 without any notice to the petitioner, and respondent No.4 managed respondents 1 to 3 in getting the unauthorized construction regularized, without carrying out the amendment in O.S.No.852 of 1997, got the suit dismissed for default on 31st day of December, 1997. The petitioner further stated that respondents 1 to 3 have illegally regularized the unauthorized construction being made by respondent No.4, despite his repeated demands to stop and remove the same, which was made contrary to the sanctioned plan, and further they are not taking any action against respondents 4 to 6 to stop the unauthorized construction being made and also in proceeding with future construction. Hence, this writ petition is filed.

3. Respondents 1 to 3 have filed a counter affidavit denying the material averments made in the affidavit filed in support of the writ petition. They contend that the Municipal Corporation granted permission to the fourth respondent for construction of a house consisting of ground floor and first floor vide permit No.330/11/95, dated 20.03.1991. They further submit that after issuance of G.O.Ms.No.243 enabling the Corporation to regularize certain unauthorized constructions, the fourth respondent made an application and got his construction regularized in accordance with the instructions issued by the Government and revised plan was sanctioned by collecting the necessary penal amount from the fourth respondent. The respondents further submit that the open space left by

the petitioner towards Eastern side as well as towards Western side together will be more than 8 feet, as such, the petitioner is not deprived of air and light.

4. The respondents 4 to 6 filed counter affidavits contending that the petitioner has violated the mandatory requirements of front, rear and side open spaces and also totally deviated from the sanctioned plan and made constructions unauthorisedly and so far did not get the same regularized. They contend that their building permission was granted on 20.03.1991, but not on 7.7.1990, and that only on 6.3.1997 i.e., after five years of completion of the construction of their building, the petitioner complained against them. They contend that they filed a suit against the MCH challenging the notice issued by it, and as it was the only necessary party to the suit, they did not implead the writ petitioner as a party to it. They further contend that they filed the suit on 11.03.1997 after sending reply, dated 10.03.1997, to the said notice issued by the MCH. They further contend that the Municipal Corporation of Hyderabad by permit No.82/8144, dated 31.07.1997, has regularized the unauthorized construction in the ground floor, first floor, second floor and a pent house in the third floor as per the corrected plan of their building portion, that by the constructions made by them, the petitioner's right for air and light are not affected, and that the construction of the entire building was completed by the year 1992-93 and they have not made any further construction either in the year 1997 or 1998 and the report of the Commissioner, who was appointed in the said suit, also would establish that the constructions were old and no new construction was being made by them.

5. The petitioner filed reply affidavits stating that respondent No.4 in order to escape from the consequences of the unauthorized

construction made by her, contrary to the sanctioned plan, has concocted a false story of making a gift of part of the plot in question in favour of her daughters i.e., petitioners 5 and 6 herein, and any regularization of the unauthorized construction made by respondent No.4 effecting his rights cannot deprive him from agitating for his rights. Morever, he also stated that respondent No.3 herein has filed counter affidavit in IA.No.1255 of 1997 in OS.No.852 of 1997 on behalf of respondent no.1, wherein he has stated that the validity of the permit dated 20.03.1991 was lapsed as respondent no.4 herein could not complete the sanctioned structures within the prescribed period of three years and that by the constructions made by respondent no.4, the easementary rights of ventilation, light and air of the petitioner herein are badly effected, and also stated that the construction made by respondent no.4 cannot be regularized as per G.O.Ms.No.243, as such, respondents 1 to 3 are bound to remove the unauthorized constructions made by respondent no.4. The petitioner further averred that he made the construction during the period from 1986 to 1988, whereas the respondent no.4 purchased the plot in the year 1989 and had he made the construction contrary to the sanctioned plan, the predecessor-in-tile of the plot purchased by respondent No.4 and respondents 1 to 3 would have made complaint and would have issued notices under Section 451 and 636 of the HMC Act and also submits that the entire building constructed by him was assessed in the year 1987 and 1989 and as such he has been paying property tax since 1987 and 1989. The petitioner also averred that respondent no.4 has started constructions of first floor, second floor and pent house during the month of March, 1997, that the unauthorized constructions made by respondent No.4 are regularized by collecting penal amount of Rs.15,000/- from 5th and 6th respondents and Rs.20,000/- from 4th

respondent respectively, which is contrary to the aim and object of G.O.Ms.No.243.

6. Subsequent to filing of the reply affidavits filed by the petitioner, respondents 4 to 6 filed an affidavit specifically stating that they are not continuing in making the unauthorized construction. They declare that they are not making any further constructions and that the report of the Commissioner, who was appointed in the said suit, would also establish that the constructions made by them were old constructions and no new constructions are made, and they further undertake of not making any further construction over or in addition to the existing structure, except completion of enclosing the staircase, plastering work and railing work.

7. Heard Sri A.Pulla Reddy, learned counsel for the petitioner, and the learned Standing Counsel for Greater Hyderabad Municipal Corporation and also Sri E.Manohar, learned Senior Counsel for R-4 to R-6.

8. Evidently, the building permission was granted to the fourth respondent on 20.03.1991 and House Warming Ceremony also was done on 20.01.1992. As the petitioner made a complaint bringing it to the notice of the then Municipal Corporation of Hyderabad about the construction made by respondent No.4 as contrary to the sanctioned plan, a notice under Section 461 of the H.M.C. Act was issued, and pursuant to it, OS.No.852 of 1997 was filed by the fourth respondent in the Court of II Assistant Judge, City Civil Court, Hyderabad and an interim injunction was also obtained. Thereafter, on an application made by respondents 4 to 6 seeking regularization as provided for under G.O.Ms.No.243, dated 22.05.1996, and G.O.Ms.No.373, dated 01.07.1998, the unauthorized construction made by respondents 4 to 6

were also regularized by collecting the necessary fee and penal amount.

9. No doubt, the learned counsel appearing for the petitioner has drawn my attention to the counter affidavit filed by the then Municipal Corporation of Hyderabad in IA.No.1255 of 1997 in the said suit and tried to contend that the stand taken by the Municipal Corporation, Hyderabad in this writ petition is entirely different from the counter filed in the said I.A. The learned counsel for the petitioner submits that as per the counter filed by the Municipal Corporation of Hyderabad in the said I.A., the building built by respondents 4 to 6 cannot be regularized, whereas in the counter affidavit filed in this writ petition, their stand is altogether different. It appears to be true, but on that score, this Court is not inclined to go into the various aspects raised by the learned counsel for the petitioner. Taking note of the increased trend of unauthorized constructions in the Corporations, Municipalities and Urban Development Authority areas, the Government thought it fit to regularize certain unauthorized constructions made and completed prior to 31.03.1996 on sites more than 200 sq. meters in area, and accordingly, G.O.Ms.No.373 was issued on 01.07.1998, whereby one time opportunity to owners/individuals was given who voluntarily come forward for regularization of unauthorized constructions made upto 30.06.1998. In the said G.O., it is also made clear as to what unauthorized constructions/buildings shall not be considered. The building in question is a residential building and the same is not within the constructions excluded by the said G.O. Respondent No.4 started construction as early as in the year 1991 and completed the entire structure of the building by 20th January, 1992. As the petitioner is

residing adjacent to the said building of respondent No.4, the said construction can definitely be said to be within his knowledge, and if really he is aggrieved, he should have brought the same to the knowledge of the Municipal Corporation of Hyderabad at the earliest, but he kept quite and made a complaint for the first time only on 06.03.1997. The said conduct impliedly establishes that the petitioner has not approached this Court with clean hands. Having allowed the respondents to complete the construction and later on, may be for obvious reasons, making a complaint for the first time only on 06.03.1997, which in my considered view, can be said to be only with an ulterior motive.

10. Further, this Court following the judgments of the Supreme Court reported in **Omprakash Gupta v. State of Andhra Pradesh**[1] and **Rajitha Enterprises v. S.K.Sharma**[2] as held in **I.Venkat Rao v. Municipal Corporation of Warangal and another**[3], held that a neighbour who is aggrieved by the constructions allegedly in contravention of the building plan has no *locus standi* to question the same in a public law remedy. If the neighbour is aggrieved with reference to the deprivation of corporeal rights as well as incorporeal rights, deprivation of property, violation of right to privacy etc., the only remedy is by way of a civil suit for declaration of easementary rights and consequential injunction.

11. This Court, under Article 226 of the Constitution of India, decides any matter on the basis of the affidavits, and it is not possible for this Court to dwell into the questions of fact, which are in serious dispute.

For the above reasons, this Court is of the view that this writ

petition merits no consideration, and is accordingly dismissed. No order as to costs.

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(**GOPALA KRISHNA TAMADA,J**)

Dt.09.08.2007
v v

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[1] 1997 (2) ALD 115

[2] AIR 1989 SC 860

[3] 2000(2) ALD 411